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LETTER DATED 20 MAY 1991 FROM THE PERMANENT REPRESENTATIVE OF IRAQ TO THE UNITED NATIONS ADDRESSED TO THE SECRETARY-GENERAL

On instructions from my Government, I have the honour to request you to have the enclosed document containing the comments of the Permanent Representative on Security Council resolution 692 of 20 May 1991 circulated as an official document of the Security Council.

(Signed) Abdul Amir A. AL-ANBARI
Ambassador
Permanent Representative

Annex

Comments of the Permanent Representative of Iraq, Dr. Abdul Amir A. Al-Anbari, on Security Council resolution 692 of 20 May 1991

The adoption by the Security Council of a procedural decision which does not allow any discussion or opinion to be voiced on resolution 692 (1991) is a most dangerous decision and constitutes a grave precedent by making the deliberations and resolutions of the Security Council analogous to a closed club cut off from the view of international public opinion and the States Members of the United Nations. Therefore, the Iraqi mission sees it as its duty to express the position of Iraq with regard to the decision and to bring its gravity to the attention of the Member States.

Throughout the cold war period, the Security Council refrained from exercising its prerogatives and duties, in particular with respect to the Israeli-Palestinian conflict. It did so by virtue of the pro-Israeli policy of the United States; the United States used the veto against any resolution which condemned Israel or attempted to protect the Palestinian people. A notable exception in this regard was the vote of the United States in 1981 with the other members of the Security Council to condemn Israel for its aggressive attack on the peaceful Iraqi nuclear installation, as well as to force Israel to pay reparations to Iraq for the losses resulting from its aggressive attack.

However, the Council then continued its traditional policy of failing to impose its will on Israel and force it to respect international legality and implement the Security Council resolutions. It took no steps to force Israel to pay reparations to Iraq in accordance with the resolution which the Council had adopted.

With the end of the cold war, the Council became more active, not, however, so much as a Council for international security, but rather as a tool and umbrella used to lend a semblance of international legality to the aggressive American policy. Resolution 678 (1990) was a turning point in the history of the United Nations: the Council relinquished its prerogatives and duties to maintain international peace and security, as laid down in Articles 42 to 49 of the Charter of the United Nations, and authorized the United States of America and its partners in aggression to use force against Iraq, not in order to achieve the objectives of the Security Council, nor under its supervision and leadership, but rather to achieve the objectives of the United States of America and its partners in aggression to destroy Iraq and put an end to its military, economic, and cultural potential.

The resolution before you today constitutes a new low. If the Council renounced its duties by adopting resolution 678 (1990), it has now claimed for itself prerogatives it did not have, by adopting resolution 692 on 20 May 1991.

In the name of international legality, the Council is violating the very essence of that legality and returning to the law of the jungle, whereby force, rather than the law, rules supreme. Whether with respect to national or international law, the essence of legality does not lie simply in enforcing the law, but rather in enforcing it soundly in such a way as to prevent its misuse; this should be done by observing the "due process of the law".* The Council has flown in the face of this essential principle of juridical legality by establishing a foreign political body which is to be the adversary, arbitrator and policeman, without abiding by any legal norm. And yet it is this body which is to determine the legitimacy of claims and the amounts of reparations, unbound by any law and without Iraq having the right of self-defence or being able to voice its opinion and debate with its adversaries.

In affirmation of the enforcement of international law and non-interference in internal affairs, the Charter of the United Nations constituted an international judicial organ, the International Court of Justice, and specified the sources of law by which the Court should be bound in deciding cases brought before it, including reparation claims, as provided for in Article 36, paragraph 2 (d). Furthermore, it entrusted the Security Council with the task of maintaining international peace and security, but did not grant it judicial authority, which was vested solely in the International Court of Justice. While the Council relinquished its authority to the United States of America and its partners by allowing them to use force against Iraq through resolution 678 (1990), with this new resolution it has exceeded its authority and encroached upon the authority of the International Court of Justice by granting itself the power to establish a body analogous to an international organization whose policy is supervised by a political body called the Governing Council, which is to represent the members of the Council and draw up a general policy on reparations, on how reparation claims shall be decided, and to determine the amounts, which may exceed tens of billions of dollars.

The question which arises, and which the Council should answer, is whence does the Council derive this authority? The Charter, in its 70 Articles, does not contain a single paragraph or word granting the Council such power. This makes the Council the first international arbitrary authority above the law and above the principles of international legality.

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* Translator's note: "due process of the law" in English in the Arabic text.

By stipulating in paragraph 16 of resolution 687 (1990) that Iraq is liable under international law for any direct loss or damage, it becomes necessary to determine the scope and reasons for Iraq's liability under the rules and procedures of international law, and not according to the interests and policies of the States members of the Security Council. The Council contradicted itself when it presumed to force Iraq to make reparations in accordance with international law without itself abiding by international law in determining the scope of its liability and the legitimacy of reparation claims, and without giving Iraq the right to voice its opinion on the legitimacy of the reparation claims from the point of view of principle and of the volume of reparations.

The Council also violated the norms of international law when it focused on the liability of Iraq for the damage which is claimed to have been inflicted, but did not require the United States and its partners in aggression against Iraq to compensate Iraq for the damage and destruction inflicted on Iraq in violation of all Security Council resolutions and all the Articles of the Charter, despite the fact that the damage inflicted on Iraq has been hundreds of times greater than that inflicted on others.

There is another dangerous element in resolution 692 (1981), which is that by authorizing the Governing Council to determine the level of appropriations from Iraqi oil revenues for the purpose of reparations, the United States and its allies in the Security Council are being given a weapon with which to control indirectly world oil prices and production. Iraq, which has been suffering from a full economic embargo since August 1990, which is likely to last for years to come, in addition to the wholesale destruction it has endured as a result of the air war and land war waged by America and its partners from 16 January 1991 to 28 February 1991, is in need of many times its oil revenue in order to meet the urgent requirements arising from the economic embargo on its exports and imports and the destruction that has been inflicted by military aggression.

For this reason, Iraq has requested a moratorium of five years, during which no part of its limited oil revenues would be appropriated in order that it might be able to provide basic requirements to the Iraqi people. By ignoring this request, the Council is shirking its responsibility to respect human rights, of which the most important is the right to life of the Iraqi people.

By effectively giving the Governing Council the authority to determine the level of appropriations from Iraqi oil revenues, the Security Council will have indirectly given the said Council the authority to determine the level of oil production in Iraq. With Iraq's increasing need for its oil revenues in order to meet its external debts and economic requirements, it will be forced by the high level of appropriations which may be determined by the Governing Council to increase production in order to obtain the greatest possible amount of these revenues. That will be bound to affect supply and demand in the international oil market and consequently world oil prices.

By responding to what America and its allies are attempting to impose on Iraq in this respect, the Council is working to smash the Organization of Petroleum Exporting Countries (OPEC) and to take away its right to control its oil resources and set prices for its exports of crude oil and oil products.

Furthermore, by imposing on Iraq sole liability for all damage and direct losses, resolution 692 (1991) is opening the door wide to all manner of greedy, avid and crafty parties to submit all sorts of false and exaggerated claims with respect to the volume of losses they claim to have sustained without there being any procedural norms for verification, without any international judges to adjudicate on such claims and without Iraq having the right to establish that a claim is not legitimate or that the amount of reparations exceed a reasonable limit.

The practical consequences of these procedures will be to impoverish the Iraqi people for decades to come and to punish the current generation, which has suffered terribly from the economic embargo and military aggression, as well as to punish future generations, who should have no legal or moral liability for acts to which they did not contribute and in which they played no part.

The end result of the resolution is no less than the abrogation of international legality in dealing with the so-called Gulf Crisis, encroachment upon the authority of the International Court of Justice, the weakening of OPEC, the harming of all oil-exporting countries, and the impoverishment and weakening of Iraq and punishment of its future generations. The unavoidable consequences of this state of affairs, if it is allowed to continue, will be to create a political vacuum in the region which will be a focus for international, sectarian and religious conflicts and struggles with untold repercussions for the region and the world.

By its insistence on impoverishing the Iraqi people and gaining control of its oil resources, the Council will have created the necessary conditions for the spread of disease, social unrest and crime as a result of the Council's sanctions aimed at reducing basic commodities and fuelling galloping unemployment and inflation.

This sinister resolution will be no less than a deed placing Iraq under the tutelage of a political body which is neither international nor legal and which has no support in the Charter of the United Nations or any international treaty or legal precedent, and which nevertheless enjoys such absolute powers as has never been granted to any international organization in the history of the United Nations. The Council will thus have sown the seed of destruction of this body, which cannot stand so long as it is not supported by the principles of law and justice and so long as its actions may give rise to damage and destruction in Iraq and in the region. This is bound to reflect on the reputation and credibility of the Security Council and its ability to maintain peace and security in the world.